SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

Nos. 280, 314 and 966

280 ROSCO JONES, *Petitioner,*
v.
CITY OF OPELIKA, *Respondent*

ON WRIT OF CERTIORARI TO SUPREME COURT OF STATE OF ALABAMA.

314 LOIS BOWDEN and ZADA SANDERS, *Petitioners,*
v.
CITY OF FORT SMITH, *Respondent*

ON WRIT OF CERTIORARI TO SUPREME COURT OF STATE OF ARKANSAS.

966 CHARLES JOBIN, *Appellant,*
v.
THE STATE OF ARIZONA, *Appellee*

APPEAL FROM SUPREME COURT OF STATE OF ARIZONA.

Petitioners' MOTION FOR REHEARING

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*Petitioners'
MOTION FOR REHEARING

MAY IT PLEASE THE COURT:

Now come petitioners in the above causes and present this their motion for rehearing, as provided by rules of

* For convenience *appellant* in No. 966, *petitioners* in No. 314, and *petitioner* in No. 280 are herein collectively referred to as "petitioners".

this Court and pursuant to order enlarging time for filing same to and including the 5th day of September, 1942; and as grounds therefor show:

Grounds

1. This Court erred in refusing to reverse the judgments of the state courts because each of the challenged ordinances is *unconstitutional on its face and as construed and applied,* in that it denies petitioners' right of freedom to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution.

2. This Court erred in affirming the judgments of the state courts because each of the challenged ordinances is *unconstitutional on its face and as construed and applied,* in that it denies petitioners' right of freedoms of press and speech, contrary to the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

Preliminary Remarks

Regardless of the sincerity of the members of this Court who joined in the majority opinion in this case on June 8, 1942, we emphatically and firmly question the correctness of that decision, and say: It is the most serious denial of liberty within history of the nation. Liberty is lost, usually, by people who do not know they are losing it. Liberty is destroyed by people who do not know they are destroying it. These liberties were bought dearly by centuries of struggle and expressed in the Bill of Rights, all of which are in grave jeopardy, if not entirely nullified by the majority opinion! How? In the modern "Stamp Tax", i.e., misapplied peddlers' license. We are greatly alarmed at this decision.[1]

That opinion so beclouds prior decisions under the Bill of Rights and the Fourteenth Amendment by vague, fine-spun and hair-splitting discussion that it becomes impossible to ascertain definitely the line of demarcation between state powers and "fundamental personal rights" formerly held by this Court to be inalienable.

The minority opinions stand squarely on the Bill of Rights against the majority's approval of the suppression of liberties under the applied ordinances. We concur fully in everything said by each dissenting justice, and here by reference incorporate such as part of this motion for rehearing. Any extended discussion thereof would be merely 'gilding the lily'. Here, however, it is suggested that said dissenting opinions be considered with this motion.

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[1] Madison said: "It is proper to take alarm at the first experiment upon our liberties. We hold this prudent jealousy to be the first duty of citizens and one of the noblest characteristics of the late revolution. The freemen of America did not wait until usurped power had strengthened itself by exercise and entangled precedents. They saw [avoided] all the consequences by denying the principle."

Direct Burden on Interstate Commerce Similar

The judgments in Nos. 280, 314 and 966 should be reversed on the authority of previous decisions of this Court involving identical ordinances knocked down as a burden on interstate commerce. The Court has overlooked entirely these compelling precedents which cannot be distinguished. We call upon the Court to face and decide the real question here.

The abstract principles stated by the "commerce clause" prohibiting state encroachment have been defined to include within its *prohibitive* terms, according to decisions not overruled by this Court to this date, the identical type of "license tax" law. In such many cases this type of ordinance with substantially identical terms has been repeatedly held unconstitutional because it is an undue and direct burden upon interstate commerce. Chief Justice Stone's words are apropos here. See pages 8 and 9 of slip opinion, his dissent.

See such cases where this Court has expressly declared unconstitutional ordinances very similar to those here applied. Peddlers of interstate commerce articles are involved in those cases.[2]

The majority opinion says that there is no line drawn between tax on "gross receipts or a net income and a suitably calculated occupational license", when applied to worship of Jehovah. It is exceedingly difficult to understand this statement of the Court when *the Court* has recently said, as to the commerce clause, that there was a difference,[3] and that a levy on gross income is void.

[2] See *McGoldrick* v. *Berwind-White Co.*, 309 U. S. 33, 55-57; *Sabine Robbins* v. *Shelby County Taxing Dist.*, 120 U. S. 489, 494-496; *Caldwell* v. *North Carolina*, 187 U. S. 622, 624-632; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 510-513; *Dozier* v. *Alabama*, 218 U. S. 124, 126-128, and *Real Silk Hosiery Mills* v. *City of Portland*, 268 U. S. 325, 335-336. See, also, *Carson* v. *Maryland*, 120 U. S. 502; *Asher* v. *Texas*, 128 U. S. 129; *Stoutenburgh* v. *Hennick*, 129 U. S. 141; *Brennan* v. *Titusville*, 153 U. S. 289; *Stockard* v. *Morgan*, 185 U. S. 27; *Crenshaw* v. *Arkansas*, 227 U. S. [illegible]; *Rogers* v. *Arkansas*, 227 U. S. 401; *Stewart* v. *Michigan*, 232 U. S. 665; *Davis* v. *Virginia*, 236 U. S. 697.

[3] *McGoldrick* v. *Berwind-White Coal Company*, 309 U. S. 33, 45 note 2.

In *Di Santo* v. *Pennsylvania*, 273 U. S. 34, 39, this Court said that such an ordinance is likely to be used "as an instrument of discrimination against interstate or foreign commerce".

This Court for the first time raised the point as to failure to attack the amount of the license tax. It is a fundamental rule of appellate procedure that the Supreme Court will not give consideration to issues not raised below and any new issues raised by counsel in the Supreme Court are frowned upon and such after-thoughts are rejected. (*Helvering* v. *Wood*, 309 U. S. 344, 348, 349; *Helvering* v. *Texpen Oil Company*, 300 U. S. 481, 498) It seems that this rule should likewise apply to afterthoughts of the Court, such as this new theory in constitutional law: *the amount of the tax must be attacked.*

This contention was not raised at any time in these cases until the majority spoke. Petitioners were not afforded an opportunity to face this question until June 8, 1942. It is herein answered by petitioners for the first time.

The opinion on this point opens wide the floodgates of speculation and nation-wide judicial confusion as to just when a license tax is unconstitutional. If the protection of civil liberty in the courts depends entirely upon determination as to what amount is or is not excessive, the protected rights become speculative, vague and enmeshed in a dragnet of confusion, and will vary with the rising of every sun and depend on the whim of every city council, police officer and magistrate vested with the arbitrary power to determine what is and what is not excessive. What would be excessive in one circumstance would not be in another.

This recently *manufactured* requirement so encumbers judicial process for establishing the "freedom" as to discourage, if not prohibit, the defense that the tax is unconstitutional. A court determination of inherent civil rights would be turned into an extended inquisition, by auditors

and referees, into the realm of finance, cause and effect, etc., and would vary in each case. It would require a burden on every minister attacking the license to call upon the charitable organization, oftentimes nation-wide, represented by him, to produce books of account thousands of miles away to show evidence of expense, etc. Thus defense is choked off by unreasonable expense in making proof in court.

In not one of the above commerce-clause cases did this Court consider or contend that 'the amount of the license tax must be questioned specifically before its constitutionality can be determined.' Nor did the Court deny rights there because the activity was viewed as commercial.

It was wholly unnecessary that petitioners attack the amount of the taxes. Each ordinance is unconstitutional as construed and applied, and it was unnecessary that petitioners secure tax license thereunder as condition precedent to raise its unconstitutionality. The courts below did not base their holding on any such technical rule of procedure.

Why the resort by this Court to such an irrelevant matter at this late date?

The cases cited in footnote 9 of the majority opinion do not support the proposition of necessity to so complain under the ordinances. They did not involve the "four freedoms" incapable of money valuation. Furthermore, here the ordinances are void on their face as construed; and under the rule announced in *Lovell* v. *Griffin*, 303 U. S. 444, 452-3, it is unnecessary to apply for a license in order to question constitutionality of the ordinance. A fortiori, one should not be required to question the amount of the tax, which tax, if imposed in any amount, is an unconstitutional burden on the privileges secured by the United States Constitution. *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 45.

Distinction Without Difference

The majority's attempted distinction of the *Schneider* and *Lovell* cases is of no effect. It is distinction without a difference. The *Lovell* case ordinance required a license (permit) for which no fee or price was asked. Here the permit (license) is required, but before it can be obtained one must pay the tax. Here one must pay money and purchase his privileges secured by the Constitution. The Griffin type ordinance is admittedly unconstitutional. By greater force the ordinances here are void because they leave the right to distribute only to those wealthy enough to pay for the privilege of exercising constitutional rights. One unable to pay is denied the "privilege" of applying for the permit as well as his fundamental right to disseminate literature containing information and opinion. Thus constitutional rights become the prerogative of only the well-to-do and ultrarich, who alone can well afford more exclusive means of spreading ideas, i. e., the hiring of radio and public press as their avenue of communication. The *poor and weak* admittedly cannot reach such heights and are thus kept away from their constitutional rights.

Segregation

Witness, please, that in all the above cases involving the sort of ordinance here questioned this Court did not there do as here done: Segregate the money received from the other parts of the transaction! There the Court did not say that delivery of the article was protected while the money received was not. Here, however, the Court has done just that, without justification, even as the Connecticut Supreme Court of Errors wrongfully attempted to do in *Cantwell* v. *Connecticut*, 126 Conn. 1; 8 A. 2d 533, and which this Court held could not be done. (310 U. S. 296) We had never heard that a constitutionally protected transaction *itself indivisible* could be segregated by hairsplitting blows

of sophistry so that one element of the transaction would remain protected while another would be split away and not so protected. This new theory was for the first time announced by the majority of this Court.

If the evidence here had shown that the literature delivered was part of an interstate commerce transaction and the "commerce clause" had been relied upon, this court would have been compelled by former precedent to declare this type ordinance invalid; or else knock down such decisions of this court so as to sustain the present convictions. Why discriminate in favor of the *"commerce clause"* against the First Amendment?

"Religious Rites" Involved

In the majority opinion it is stated that the financial aspects incidental to exercise of freedom of worship through distribution of literature make constitutional the application of these ordinances. This Court goes further, saying, "If we were to assume, as is here argued, that the licensed activities involve religious rites, *a different question would be presented.* These are not taxes on free-will offerings. But it is because we view these sales as partaking more of commercial than religious or educational transactions that we find the ordinances, as here presented, valid. A tax on religion or a tax on interstate commerce may alike be forbidden by the Constitution."

In holding that petitioners' activity did not involve worship of Almighty God, i.e., a 'religious rite', a majority member imposed his *private* opinion as to what constitutes *worship,* and made findings not only unsupported by evidence but contrary to undisputed evidence, stipulation, and findings of the courts below.

In No. 280, the Alabama Supreme Court and Court of Appeals found that Jones was engaged in "religious rites" by distribution of pamphlets setting "forth the gospel of the Kingdom of God as he believes and preaches it".

(R. 3-4, 62) In the trial court respondent admitted that Jones' activity was that of 'a minister of the gospel and engaged in such work' at the time of his arrest. R. 54.

In No. 314, it was stipulated that petitioners were ordained ministers believing 'that the only effective way to preach is to go from house to house and distribute books and pamphlets'. (R. 11) That neither they nor their charitable corporations, publishers for Jehovah's witnesses, make any profit. (R. 12) That 'the books were distributed free when people wishing them were unable to contribute'. (R. 13) The record shows that the activity was admittedly 'religious rites'. (R. 15-20) The stipulation admits that the literature is not sold, nor profit made: "The small amount of money contributed by the public for the literature covers only a portion of the actual cost of this work, the deficit is made up by voluntary contributions from those who share in this work." (R. 20-24) The Arkansas Supreme Court finds the facts pursuant to said stipulation and *did not* find a *sale*, but that they solicited a contribution and if the person was unable to contribute he could obtain the literature without charge. R. 30-32.

In No. 966, the Arizona Supreme Court stated that Jobin was 'a regularly ordained minister of Jehovah's witnesses—going from house to house in the city of Casa Grande preaching the gospel, by means of spoken word, by playing various religious records with approval of the householder, and by distributing literature which set forth his understanding of the Bible.' (R. 47-48) Also, "if the parties did not desire to buy the books but promised to read them carefully, they were given free of charge." R. 48.

On the record, this Court cannot avoid finding the activity involved 'religious rites', and cannot assume any different position. The taxes in question *are* taxes on free-will offerings.

The construction of the ordinances in question by the state courts presents the same questions as though the

municipalities had passed a law providing that 'all persons receiving money toward preaching while so engaging in acts of worship of Almighty God or in religion must procure a license from the city clerk and pay therefor the annual fee' of a stated sum. No person would suggest that such a law is *not* invalid. Even the majority admits such a law would be invalid. Yet the Court here sustains laws, as construed and applied, which do that very prohibited evil thing.

The Court cannot properly say there is no "religious" question involved simply because the majority opinion judges lacked judicial breadth of vision to discern it. Many judicial decisions have upheld petitioners' activity as 'a religious rite'. This Court expressly so held in the *Cantwell* case. Why the change of opinion now?

The moment any court, be it the Supreme Court or the lowly magistrate's court, assumes the right to hold a particular "religious" view unreasonable, that moment it begins to deny "religious" *freedom*, which it is sworn to protect. The very purpose of the Bill of Rights is that unpopular minorities may hold and express views unreasonable to majorities, judges not excepted.

On this point the Kansas Supreme Court in a case concerning Jehovah's witnesses, *State* v. *Smith*, 127 P. 2d 518, decided July 11, 1942, said: "We are not impressed with the suggestion that the religious beliefs of appellants and their children are unreasonable. Perhaps the tenets of many religious sects or denominations would be called reasonable or unreasonable, depending upon who is speaking. It is enough to know that in fact their beliefs are sincerely religious, and that is conceded by appellee. Their beliefs are formed from the study of the Bible and are not of a kind which prevent them from being good, industrious, home-loving, law-abiding citizens. Upon this point the evidence is clear." In that case the Kansas court refused to follow the decision of this Court in the *Gobitis* case and defiantly

held that the Kansas Bill of Rights was stronger than the First and Fourteenth Amendments to the United States Constitution as construed by this Court.

The attempted distinction by the majority between activity of Jehovah's witnesses and "recognized" religious clergy, so as to protect the latter and "regulate" the former, cannot be sustained except in *private* opinion of the judges disregarding the right of the individual to make his choice of worship or to act as dictated by God's law. Why protect the rights of the clergy recognized by the majority and not equally protect Jehovah's witnesses to whose *way* of preaching, or to whose *message* preached, the majority takes exception?

Not Commercial Transactions

In the record of these cases there is no support for the conclusion that the activity was commercial.

By what process the majority reached the conclusion that petitioners' activity *is commercial* is not revealed. Strange that this Court should reach such a conclusion in the face of respectable findings of many other federal and state courts, not so high as this Court but equally familiar with the facts, positively stating that petitioners' work is not commercial.[3]

The contrary is established by evidence and stipulation, that the work was charitable and benevolent. The majority judges have erroneously substituted their *private* opinions for the stipulation and evidence.

Petitioners' activity is not at all like Protestant churches maintaining a bazaar and selling food, clothing and other merchandise *to earn money*. Such church practice is wholly

[3] *State* v. *Meredith*, 197 S. C. 351, 15 S. E. 2d 678; *Semansky* v. *Stark*, 196 La. 307, 199 S. 129; *Thomas* v. *Atlanta*, 59 Ga. App. 520, 1 S. E. 2d 508; *State* v. *Mead*, 230 Iowa 1217, 300 N. W. 523; *State* v. *Richardson*, . . . N. H. . . . (decided June 24, 1942); *Shreveport* v. *Teague*, 8 S. 2d 640, . . . La. . . . (decided May 25, 1942); *Cincinnati* v. *Mosier*, 61 Ohio App. 81, 22 N. E. 2d 418; *Donley* v. *Colorado Springs*, 40 F. Supp. 15.

unrelated to public worship or preaching in a pulpit.

The Court has confused activity of Jehovah's witnesses with, and impliedly compared it to, practices foreign to and no part of "religious rites", such as church "suppers" and "bingo parties" conducted by "recognized" religionists *to earn money*. Such practices cannot be confused with "religious rites".

No one seriously contends that taking of *money* in the contribution plate passed throughout the audience before the sermon from the pulpit makes such practice of recognized religionists "commercial", or 'partaking more of commercial than religious transactions'. This Court so states, that *such* free-will offerings are not taxable as commercial activity. Thus the clergyman could not be required to pay a license fee before entering the pulpit simply because he, orally and by passing the plate, solicits contributions of money to sustain him. Thus the only difference between methods of the recognized religious clergy and the way Jehovah's witnesses work is that clergymen solicit contributions in edifices and then sermonize, while Jehovah's witnesses preach as did Jesus and His apostles, publicly and from house to house (Luke 13:26; Acts 20:20; 1 Peter 2:9, 21), receiving 'free-will offerings' as they go to people not in attendance at church edifices and who either are or are not members of any "religion". (Luke 8:1, 3) But as to Jehovah's witnesses, the Court takes a different position. The Court's noble-sounding expression will not be accepted by the tax collector in lieu of the fee required by any city ordinance applied to Jehovah's witnesses.

The Court says that a tax on the "religious rite" is unconstitutional. Petitioners' distribution of their literature is

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[4] "It may well be that the wisdom of American communities will persuade them to permit the poor and weak to draw support from the petty sales of religious books without contributing anything for the privilege of using the streets and conveniences of the municipality. Such an exemption, however, would be a voluntary, not a constitutionally enforced, contribution." REED, J., majority opinion.

admittedly a 'religious rite', i. e., their *way* of preaching the gospel. Their taking of contributions, while incidental, is a necessary part of the entire 'religious rite' and is protected as is the transaction of the *recognized* clergy in their solicitation of money from the pulpit or from house to house. To permit licensing of a preacher as a condition precedent to his receiving contributions to sustain him to preach further is identical with license taxation of preaching itself. It would choke off the sustenance thereof. The hairsplitting dissection of the protected right performed by the majority opinion to sustain the license tax finds no support in law, reason or fact.

Any attempt by the majority judges to distinguish between the *protected* activity of the recognized clergy and the "unprotected" activity of Jehovah's witnesses (who follow the example of Christ Jesus and His apostles) is a distinction unsupported by law or fact. If such misapplication of the ordinances is sustained, it might well be that the *protected* religious clergy will hang on the gallows designed for Jehovah's witnesses. Well did the Supreme Court of Louisiana, in *Shreveport* v. *Amos Teague* (one of Jehovah's witnesses), 8 S. 2d 640, on May 25, 1942, so say.

Not every activity involving a 'monetary incident' is merchandising. Dissemination of ideas is expensive, if appreciative hearing is secured. No missionary effort, whether religious or political, can be run without money. It is proper and necessary to receive contributions to help defray the cost of dissemination. To *confuse* the commercial business of selling fruit, vegetables, etc., with activity carried on by petitioners *in the public interest* disregards major emphases which distinguish charitable activity from Woolworth's, the political party from "Wall Street".

What Jehovah's witnesses do is the very antithesis of commercialism, hawking and peddling. The transactions were not for profit or livelihood either to petitioners or to the benevolent publishing corporation. The commodity (lit-

erature) was not commercial; the way of working was not commercial, and the purpose was not commerce. No business could survive on such basis as conducted by Jehovah's witnesses. In short, their activity was neither "sales" nor *business*. It was essentially the distribution of literature containing written "sermons"—but *on the terms of the receiver,* who, so desiring, could acquire the literature without contribution; however, any free-will offering was accepted, to aid toward cost of publishing more.

When there is no element of gainful enterprise and the literature is tendered on above-described terms, all semblances of "sale" and commercial elements vanish. When recipient tenders money under such conditions, he donates it to the cause just as the people do who drop coins in Salvation Army tambourines. That is true regardless of whether or not they take the tendered copy of "War Cry". To deem the parties to such a transaction as bargaining at arm's length, cautiously applying *caveat emptor* in the manner of housewives dealing with hucksters, strains credulity, judgment and common experience.

The majority opinion further states that when charitable groups sell books and tracts as a source of funds, a reasonable fee for their money-making activities may be required and "It is enough that money is earned by the sale of articles". When applying that rule to Jehovah's witnesses, who substitute printed books for oral sermons, it can be similarly applied to the clergyman in the pulpit who takes up collection. Oral sermons are costly; so also are printed ones and likewise their delivery. Hence free-will offerings are even more vital in the latter case.

The Court will take judicial notice of the fact that recognized clergymen from their pulpits solicit "free-will offerings" by methods indistinguishable from the "transactions" which the Court *views* as "commercial" when conducted by Jehovah's witnesses. Why this discrimination?

In the edifice, the clergyman announces the church

treasury's need. Not infrequently he appeals vigorously for a specified sum, whereupon the ushers pass the plates. Often he calls upon each parishioner to pledge a stated sum for each week's offering. Witness also the arrangement of pew rent, allowing seats only on advance *cash* payment. Other clergymen have a fixed "entrance" fee, not unlike the well-known "cover charge" of the swank *temple du gourmet!* Please note such "free-will offerings" are required to be made prior to enjoying 'benefit of clergy'—the oral sermon.

Jehovah's witnesses, however, give literature not upon condition of either advance payment or any payment, but permit the desirous recipient to contribute any sum he chooses, if able; and if unable to contribute, literature is left *gratis* upon his promise to read it.

It is manifest that such "transactions" by recognized religious clergy may be rightly viewed as partaking more closely of 'commercial transactions' than the preaching by Jehovah's witnesses.

The act of taking the contribution cannot be segregated from the act of worship, so as to enable taxation, without burdening the act of worship.

It is entirely proper to receive contributions to aid in preaching the gospel. (See 1 Corinthians 9:3-27.) This reasoning of Paul is corroborative of the Master's own words: "The workman is worthy of his meat [maintenance]." (Matthew 10:10) That Jesus accepted contributions in course of His preaching from house to house and city to city (Luke 8:1, 3) is proved in that one of His disciples carried the contribution bag with funds for necessities and, occasionally, as the record shows, the disciples drew on that bag for their sustenance, as they worked *in the public interest*.—John 13:29; 12:6; 4:7, 8; Luke 9:52, 53; Mark 6:37; 14:12-16.

The Scriptures show that Jesus Christ's apostles did not ask for nor obtain a license or pay a tax as a condition precedent to preaching because they received contributions.

Application of a license-fee ordinance to the act of taking contributions of itself burdens and suppresses the act of worship connected therewith. (*Cantwell* v. *Connecticut*, supra) Asking for permission or license to perform acts of worship commanded by Jehovah and His Son Christ Jesus to be done by His servants is unnecessary and is exalting the State above God.

Judicial Discrimination

The position taken by the courts below and in the majority opinion clearly discriminates in favor of "recognized" clergy as against "the poor and weak" servants of Jehovah God, preaching as did Jesus.

This discrimination cannot be screened for long behind statements to the effect that the activity of Jehovah's witnesses is viewed as "commercial", when contributions to the recognized clergymen, who regularly *solicit* contributions, is not so labeled and taxed.

"The mind rebels at the thought that a minister of any of the old established churches could be made to pay fees to the community before entering the pulpit." MURPHY, J., dissenting opinion.

The fair judicial mind also rebels against taxation to prohibit and substantially impair the spread of the message of the Kingdom of Almighty God by Jehovah's witnesses, even though elements of their preaching are controversial and run counter to traditional notions of some persons in any community.

While Jehovah's witnesses are unpopular, this is not because of any wrongful course, but is solely because they act strictly in obedience to Almighty God and Christ Jesus. "Ye shall be hated of all nations for my name's sake."—Matthew 24:9.

In spite of nation-wide unpopularity caused by misrepresentation and by pressure groups, they are, nevertheless, entitled to the same protection under American law as

clergy religionists get. As American citizens Jehovah's witnesses have the same rights.

Justice Jackson

in *Edwards* v. *California*, 314 U. S. 160, 182-186, among other things said: "The power of citizenship as a shield against oppression was widely known from the example of Paul's Roman citizenship which sent the centurion scurrying to his higher-ups with the message: 'Take heed what thou doest; for this man is a Roman.' I suppose none of us doubts that the hope of imparting to American citizenship some of this vitality was the purpose of . . . the Fourteenth Amendment." See, also, Acts 22:23-30; Acts 25:10, 11, where Paul claims his right as a Roman citizen and stated, "I appeal unto Cæsar."

Prohibitive Burden on Worship and Press

The majority says: "So the mind and spirit of man remain forever free, while his actions rest subject to necessary accommodation to the competing needs of his fellows." This is a new theory grafted onto the Constitution and the law. According to precedent, the only time acts involving freedom of conscience are subject to restriction is when the act presents a clear and present danger to the nation and to property rights of others; or is contrary to morals, or that public peace will be invaded. The Court does not define "competing needs", but the point seems well answered in *Schneider* v. *State*, 308 U. S. 147.[5]

"The mind and spirit of man remain forever free," says the Court. But he still needs a license! His mind and spirit are free so long as he sits on a porch, or is sound asleep in bed. If his mind and spirit move him to get up and go some-

[5] "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." ROBERTS, J.

where *in the interest of others,* there freedom ends and he must have a license. Under this doctrine only the unused mind is free; only the spirit which never soars has the right to fly. The Court has ruled firmly that if you don't use your mind, none may interfere with you. If you do, they may. Jehovah God and Christ Jesus dissent: "No man, when he hath lighted a candle, putteth it in a secret place, neither under a bushel, but on a candlestick, that they which come in may see the light." (Luke 11:33) See, also, Matthew 10:27; Mark 4:21, 22. *Freedom of thought only* is a favorite Nazi tenet of liberty without freedom of expression.

The fee for use of the public streets for business purposes is proper for use beyond the common right. It is a sort of rental or reimbursement for wear and tear from private use. But it has no valid bearing on the common right or use, more especially free speech, a free press, and worship of Almighty God. (John 4:21-23; Proverbs 1:20, 21) That these are part of street heritages means they cannot be impaired, notwithstanding their exercise may be regulated appropriately.

Taxation is not appropriate for such regulation. Once that wedge enters, it widens with every legislative stroke. Under guise of securing public order, decorum and free movement of traffic public expression is suppressed. *Taxed speech is not free speech.* It is silence for persons unable to pay the tax. Nor is taxed distribution of literature a free press. (*Grosjean* v. *American Press Co.*, 297 U. S. 233) Nor is *taxed* dissemination of Bible literature freedom of worship.

This Court has no more right to hold the activity of Jehovah's witnesses *commercial* than it would to find that the so-called "minute men" knocking on the doors of every house in the nation to sell war bonds are subject to a license tax. If this decision is upheld there is nothing to prevent local authorities from so applying it. The approval of this license tax is the same as approval of a fixed unconsti-

tutional tax of two cents per copy on each pamphlet, newspaper or leaflet distributed in the city, and it is not necessary to attack the amount of such so-called PER-COPY tax as a condition precedent to questioning the constitutionality.

The license charge made here by the ordinances infringes distribution. It will bear most heavily on persons least able to afford it and most in need of avenues for free communication, as petitioners, who are *prevented by boycott* and pressure methods of "big" religionists from hiring use of newspaper space and radio time.

"Substantial Clog"

The majority says that if the literature had been given away free then the ordinances would be unconstitutional if applied. In this they unjustly limit the freedom to those able to distribute gratuitously.

Freedom of speech and press is not confined to distribution without charge. There may be others with messages more vital but purses less full, who must seek some reimbursement for their outlay or else forego passing on their ideas. The pamphlets of Paine were not distributed gratuitously. (MURPHY, J.) This Court decrees, in effect, that THE PRESS now remains the agent only for those who can afford to *purchase* the right of publication.

It is admitted that if the ordinances required only procurement of a license permit without a tax such would be unconstitutional and void. (*Schneider* v. *State* and *Lovell* v. *Griffin,* supra) By double force the adding of a tax to the invalid license would not save it, but increases its objectionable features.—*Magnano Co.* v. *Hamilton,* supra.

If petitioners have the right to engage in this activity by giving the literature free the right cannot be properly taken away by reason of their accepting small sums contributed by willing givers to publish more books, regardless of how such contributions may be viewed by others.

The line between free distribution of literature on the

streets and from house to house, upheld by this Court, and what was done here by these petitioners, is too thin to sustain a distinction in constitutional right. *"With or without the money feature, petitioners were pamphleteering, not selling or begging."* Mr. Justice Murphy says: "If this Court is to err in evaluating claims that freedom of speech, freedom of the press, and freedom of religion have been invaded, far better that it err in being overprotective of these precious rights."

Borderline cases such as described in the majority opinion should be resolved not in favor of the regulation, but in favor of the cherished right.

Throttled Press

Suppose unscrupulous bosses of the various American cities received word that the press was about to expose graft and mismanagement in city affairs. Such bosses or their political stooges could speedily require the distributors of newspapers to pay a pedllers' license or be prosecuted, thus curtailing or stopping distribution. This application of such ordinance encourages the press to suppress vital news or print it and be driven out of business by wrongful extortion of the license for its newsboys or through payment of fines for refusal to secure such license. This license by the majority opinion for such condition hampers freedom of conscience. It chokes free discussion and circulation of opinion. It hedges in and impedes the march of theories and doctrines before the eye of public criticism—without which progress and enlightenment are impossible. This presages the passing of free expression and discussion—essential light of liberty—and paves the way to put the people under a cloud of ignorance like the pall that hangs over those now ruled by Axis despots.

This decision has unraveled constitutional history by imposing a tax as oppressive as the Stamp Tax. By attaching strings to the freedoms they are quickly pulled back-

ward into the DARK of the Middle Ages. The Court has permitted local town licensing officials througout the land to set up a catalogued price list on the freedoms formerly held to be "incapable of money valuation". As Sam Grafton, columnist, says concerning the Court's decision: "Ten dollars gives you free speech, and $9.99 says you can't open your face."

Historically freedom of the press means freedom from burdensome taxation in any form, large or small. Taxation of the press is equally as objectionable as censorship.

Very soon after introduction of the printing press into England by William Caxton, in 1476, the Crown assumed complete control of the press. Henry VIII did so by authority of his kingly prerogative and the issuance of Letters Patent granting a monopoly of the privilege of printing and distributing and selling books. Under Mary, control of printing was maintained by limiting such right to the Stationers' Company which was founded by royal charter in 1557. The number of presses was limited, all publications were subject to previous inspection, and the seat of regulation was in the Court of the Star Chamber, which had been granted the power of general censorship. Both the Tudors and the Stuarts resorted to *this court* for the suppression of seditious libels.

Under Elizabeth, the number of printers was limited to twenty, no one could print except under royal patent, and no book could be printed except in London, Oxford or Cambridge. During the reign of Elizabeth, prosecutions for seditious libel continued, and in 1586 the Star Chamber published stringent ordinances for the regulation of the press, again restricting the presses to London, Oxford and Cambridge. Under these ordinances no one was permitted to print anything until it had been "seen and allowed" by the archbishop of Canterbury or the bishop of London,—except the queen's printer or the law printers, who were licensed by the chief justice and the chief baron. The Stationers' Com-

pany was authorized to search houses and shops, to destroy all books printed in violation of the ordinance, and also to destroy all unlicensed presses.

The early Stuarts, James I and Charles I, claimed all the royal prerogatives of their predecessors. Prior to 1637, the number of unlicensed printers had become so great that the Star Chamber decreed that all printed books must be submitted for license and must be registered by the Stationers' Company before publication, under penalty of forfeiture of the presses. Law books continued to be licensed by the chief justice or the chief baron of the Exchequer, books of history and politics by the secretaries of State, books of heraldry by the earl ma 'al, and all others by the archbishop of Canterbury and the bishop of London. Only twenty master printers were permitted, and no one could have more than three presses. Prosecutions for sedition and seditious libel continued to be brought in the Court of Star Chamber. One of the most notorious was the prosecution of Prynne, who published a work attacking the theater, hunting, public festivals, etc. He was sentenced to stand twice in the pillory, to lose both ears, to pay a fine of five thou sand pounds, and to be imprisoned for life.

Although the Court of the Star Chamber was abolished by Act of Parliament in 1641 and restrictions upon freedom of the press disappeared temporarily, the Long Parliament, in June, 1643, re-established regulation and licensing of printing; it declared that no order of either house of Parliament should be printed except by their express consent and that no book or pamphlet whatsoever should be printed unless it had been first licensed and entered in the register of the Stationers' Company. The latter was again authorized to search for unlicensed presses and books and to destroy them, to arrest authors and printers and to inflict punishment upon them. It was the passage of this licensing act of 1643 that inspired John Milton to write his "Areopagitica", which was itself written and published in

violation of the license statute. The Licensing Act was repealed in 1649 and for a short time even the licensed press was suppressed by Parliament, but the statute was re-enacted in 1650. In 1655 Cromwell suppressed all publications except two official publications conducted by Nedham, who continued to control the press until his death. In 1659, General Monk, after Cromwell's death, encouraged Henry Muddieman to begin the publication of a paper called "Parliamentary Intelligencia", and in 1660 the Council of State suppressed the two papers conducted by Nedham. The Licensing Act was re-enacted in 1662 and was in substance the same as the Star Chamber order of 1637. All books or pamphlets had to be entered with the Stationers' Company; the master printers were still limited to twenty, and books could be printed only in London, York or at the universities. The Act was in effect for two years and was renewed from time to time until 1679. It was again renewed in 1685 and remained in effect until 1695. Although during this period there were numerous prosecutions for seditious libel, the publication of papers, tracts, leaflets, etc., increased enormously.

Under James II, a large number of printers, in spite of the Licensing Act, carried on their art in the garrets and other secret places of London. During his reign, the Licensing Act was renewed and was enforced in a particularly tyrannical manner except against the Jacobite Press, which was permitted to publish articles favorable to the King.

Under William and Mary, the Licensing Act was again renewed. When the last renewal expired, in 1695, the Committee of the House, which had the Act under consideration, recommended a further renewal, but when submitted to a vote the report of the committee was defeated. This date marks the end of licensing and censorship in England.

About this time daily newspapers appeared and criticism of the House of Commons became so violent that, at the suggestion of Queen Anne, in 1712, the House resorted to

a new method of restricting freedom of the press. It enacted a stamp tax on newspapers and a tax on advertising. For nearly a century and a half thereafter there was constant oppression by levy and collection of these taxes. These taxes were one of the chief causes for unrest among the American Colonists and were commonly called "Taxes on Knowledge". Their purpose was to curtail the circulation of cheap newspapers among the masses of the people, and in this they were actually successful to a certain extent although papers on which the tax had not been paid continued to be printed in violation of the law. From time to time the amount of the stamp tax was increased in order further to restrict the circulation of cheap newspapers. Progressive increases were enacted in 1756, 1789, 1798, 1804 and 1814. In 1836, the tax was reduced for the first time, but a heavy duty was levied on the paper material itself. The direct result of these taxes was to make the printing of newspapers costly and to restrict their circulation. The advertisement tax was reduced in 1833, and abolished in 1853. The stamp tax was finally abolished in England in 1855, and the duty on paper was repealed in 1861.

Prior to the adoption of the Constitution of the United States, not only did the British Parliament impose stamp taxes on newspapers in the colonies but some of the colonies themselves established such taxes. Massachusetts imposed a stamp tax on newspapers during the years from 1755 to 1757, and New York imposed such a tax from 1757 to 1760. In 1765 the British Parliament imposed a tax on all colonial newspapers of from a half penny to a penny, according to the size of the newspaper, and a tax of two shillings on every advertisement. This tax raised a storm of protest in the colonies, who cried out against these taxes as "taxation without representation".

In 1785 the Massachusetts legislature imposed a stamp tax on all newspapers and magazines, and the following year an advertisement tax was imposed. Both taxes met with

violent opposition, and the former was repealed in 1786, and the latter in 1788. A stamp tax was the current method of suppression at the time of the revolution and of the adoption of the *Constitution*, and unquestionably the Bill of Rights and the Fourteenth Amendment were both aimed and leveled at this evil as well as the older methods of censorship. The license tax here imposed upon the distributor destroys the life of the press—distribution. It also falls squarely within abridgments discontenanced by the Fourteenth Amendment.

A pamphlet entitled "Taxes on Knowledge", by Baron Brougham and Vaux, published in 1834, contains a very interesting discussion of stamps on newspapers and periodicals. He points out that the effect of such a tax is to increase the number of illegal newspapers, particularly those of a malignant and profligate character. It is his opinion that cheap newspapers are for the public benefit and that insofar as such a tax increases the cost of newspapers, it is not in the public interest. He points out that in America, where no stamp tax existed at that time (1834), the proportion of newspapers to the population was twenty or thirty to one more than in England.[6]

The word "abridging" in the First Amendment needs discussion. The word "abridge" means to shorten, to curtail or to reduce, and comes from the same root as the word "abbreviate". The word does not mean to destroy, forbid, prohibit or prevent. The use of the word "abridge" in the First Amendment may be compared to the word "burden". In order to show the ordinances invalid, it is not necessary to find that they deny, destroy or prohibit freedom of the press; but it is sufficient if it is found that the ordinances

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[6] See also *Near* v. *Minnesota*, 283 U. S. 697, 707-716; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244-251; "The History of American Journalism," by W. G. Bleyer, 1927 ed. 1-129; "Free Speech and a Free Press," by G. J. Patterson, 1939 ed.; "The Struggle for the Freedom of the Press from Caxton to Cromwell," by W. M. Clyde, 1934 ed.; and "History of Taxes on Knowledge", by C. D. Collet, 1899 ed.

burden this right. Admittedly they do, and therefore are unconstitutional.

Just how this Court can avoid the impact of the holding in *Grosjean* v. *American Press Co.*, 297 U. S. 233, is not clear. Like all other authorities relied upon by petitioners, a discussion of same is completely ignored in spite of the fact that it is directly in point. There Louisiana imposed a two percent tax on the gross receipts of any newspaper, magazine, etc., engaged in selling advertisement in the state and having a circulation of more than 20,000 per week. Contrary to the statement made from the bench by two majority justices during the oral argument of the case at bar, it is to be noticed that this Court decided that the tax was a direct burden on freedom of the press and *was not* decided on grounds of unfair discrimination. Although this Court could have avoided a decision of the freedom-of-press question in the *Grosjean* case by sustaining the contention of unfair discrimination, it did not do so. The two percent *gross income* tax declared invalid cannot be distinguished from the license tax imposed here on the distributor. The tax in the *Grosjean* case was on the COMMERCIAL *income*, while here the tax is on the distributor, irrespective of "income". A fair discussion of the *Grosjean* case is necessary before a disposition can be made of this case.

Appendix

The majority decision in these cases has aroused the *national press* to make unusual and condemning comments as to consequences. Of the huge number of editorials examined not one has been favorable to the majority opinion. Excerpts from some of these editorial comments are printed in a separate document, designated as Appendix. That is filed with the Clerk and available to members of the Court who are interested in the *laymen's* views of this Court's action here.

Real Issue Avoided

The Chief Justice, in the present cases at bar, says: " . . . In their briefs here they argue, as upon the records they [petitioners] are entitled to do, that the taxes are an unconstitutional burden on the right of free speech and free religion comparable to license which this Court has often held to be an inadmissible burden on interstate commerce. . . . While these are questions which *have been studiously left unanswered* by the opinion of the Court, it seems inescapable that *an answer must be given* before the convictions can be sustained. Decision of them cannot rightly be avoided now by asserting that the amount of the tax has not been put in issue; that the tax is 'uncontested in amount' by the defendants, and can therefore be assumed by us to be 'presumably appropriate', 'reasonable,' or 'suitably calculated'; that it has not been proved that the burden of the tax is a substantial clog on the activities of the defendants, or that those who have defrayed the expense of their religious activities will not willingly defray the license taxes also."

Before the judgments of conviction can be affirmed it is necessary to answer the avoided questions, as suggested by Chief Justice Stone. To avoid answering such questions impliedly overrules or sidesteps compelling precedent and destroys the value of opinions, undermines public confidence. It makes uncertain and greatly confuses the law. It is contemptuous of "abstract principles" and former well-reasoned decisions. To decide, as here, in accordance with what seems to the justices to be "right" and "just"[1] in the particular instance, is one of the easiest ways for judges to convert themselves into lawmakers and legislators. It is one of the easiest ways to convert the Court into the super-government.

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[1] "There is a way which *seemeth right* unto a man, but the end thereof are the ways of death."—Proverbs 14: 12.

"If it be the part of wisdom to avoid unnecessary decision of constitutional questions, it would seem to be equally so to avoid the unnecessary creation of novel constitutional doctrine, inadequately supported by the record, in order to attain an end [not] easily and [not] certainly reached by following the beaten paths of constitutional decision." STONE, J., in *Hague* v. *C. I. O.*, 307 U. S. 496, 525. [Bracketed words supplied.]

Not Regulatory

The lengthy argument by the majority opinion devoted to power to regulate is entirely immaterial to the validity of the ordinances in question.

The ordinances are admittedly not regulatory and do not purport to control time, place or manner of distribution of pamphlets or even "sale" of merchandise. One obtaining the license is by the ordinances left free to "peddle" anywhere at any time. No abuses justifying regulation are advanced here. The tax is not contended to be a "fee" for policing or licensing expense but is solely tax. The courts below described them as taxes, not fees. In *Cox* v. *New Hampshire*, 312 U. S. 569, 577, the "fee" was not a revenue tax, but one to meet the expense incident to administration and to provide police protection and attendance to parades. The taxes here involved are ostensibly for revenue purposes. It is not claimed that activity of Jehovah's witnesses creates problems causing expense to the municipality.

Bad Effects Prove Error

Justness of a decision by the Court is determined primarily by its consistency with the perfect law of Almighty God. (Psalm 19:7) This is absolutely true as to dealings with servants of Almighty God, such as Jehovah's witnesses. The decision in *Minersville School District* v. *Gobitis*, 310 U. S. 586, this Court's *stepping stone* or *stumbling stone*

in this case, is clearly wrong because it is manifestly contrary to Almighty God's commandment respecting conduct of creatures bound in a covenant with Him. (Exodus 20:2-7) Experience from misapplication of the *Gobitis* decision also shows that it is wrong.

Immediately following delivery of the *Gobitis* opinion on June 3, 1940, a nation-wide campaign of newspaper publicity and idle gossip was launched by enemies of Jehovah's witnesses, *falsely* accusing them of being 'against the flag and government', solely because they refuse to salute any flag, including the American flag, for *conscience'* sake. The decision was like a lighted match applied to a field of dried grass. Prejudice created by unfavorable newspaper publicity flamed into open violence. Widespread mob attacks resulted immediately against Jehovah's witnesses. For more than two years, in thousands of communities throughout the land, certain religious elements or "would-be" patriotic elements have led men controlled neither by law nor by reason to assault thousands of Jehovah's witnesses, men, women and children; destroyed their property; drove them from their homes; burned their houses, furniture, books and money; tied groups of them together and forced castor oil in large quantity down their throats; herded them like beasts through the land; and committed numerous other deeds of violence and wickedness against them, and continue so to do to this day without interference from *the law*. Public officials, influenced by well-known religionists, broke into homes of private citizens, kidnaped and carried them from one state to another, and broke up their private Bible-study meetings.

Thousands of children have been expelled from school and great numbers prosecuted as delinquents, many convicted and taken from parents. Hundreds of parents have been threatened with prosecution for the alleged crime of contributing to delinquency and truancy of their children,

and many convicted—all because they have taught them the Bible and the children have obeyed God's commands.

Thus it is manifest that the *Gobitis* decision against freedom of conscience has ever been and now is an instrument for evil in the hands of superpatriots and pseudo-patriots.

Today hundreds of Jehovah's witnesses are being prosecuted under state law recently enacted in Mississippi which prohibits possession and distribution of literature explaining the reasons why Jehovah's witnesses cannot salute the flag. The punishment is confinement in the penitentiary and is mandatory for the duration of the war, not to exceed ten years. The state of Louisiana has followed suit by enacting same statute. This is another direct result of the *Gobitis* decision.

We venture that the decision in the present cases will result in even greater persecution than from the *Gobitis* case. Almost every town, village, and hamlet throughout the United States has a license-tax ordinance of the kind here involved, which the Court now advises can be properly applied to Jehovah's witnesses. In these United States there are many thousands of active ministers, Jehovah's witnesses, distributing literature from house to house and upon the streets, all of whom will be subject to prosecution thereunder. Already, since June 8, 1942, hundreds have been arrested and prosecuted. Since they cannot apply for a license to do that which Jehovah God commands, it is reasonable to expect that thousands more will be prosecuted, convicted and jailed. This condition is comparable only to that which has prevailed in Germany for a decade, where Jehovah's witnesses are beheaded, shot, and linger in concentration camps by the thousands because they refuse to 'Heil Hitler', salute the Nazi flag and violate the commandment of Almighty God to continue preaching the gospel of God's Kingdom. They have been similarly treated in every country overrun by the Axis powers.

"Martyrdom"

The majority opinion quotes from Cardozo, J., in *Hamilton* v. *Regents*, 293 U. S. 245, 268, a case which is not at all in point here, saying, "One who is a martyr to a principle . . . does not prove by his martyrdom that he has kept within the law."

Just laws, properly applied, would never cause an upright person, endeavoring in good faith to serve Almighty God, to suffer "martyrdom".

A law which results in "martyrdom" to one who practices a right principle is necessarily unconstitutional, in its application to the "martyred" one. If Jehovah's witnesses "suffer martyrdom" because of this decision, it cannot properly and fairly be said that they have not obeyed the law. They have obeyed every law of the land which does not require them to violate the law of Almighty God, whose law is supreme, as is recognized by Cooley and Blackstone. If the Court rules that any law of the legislature is supreme, over the Constitution and God's law, then we are without argument before this Court and rest our case entirely with Almighty God, JEHOVAH, the Supreme and Final Judge, who always *acts* to uphold His faithful servants, Luke 18:7, 8; Psalm 105:14, 15.

He who thinks that these misapplied ordinances will "stop" Jehovah's witnesses errs, because even Adolf Hitler's vain attempt has failed to *stop* them. That which is RIGHT can never be destroyed by laws of man. Jesus spoke the truth, and the rulers killed Him, but that never stopped the preaching of the gospel, which they thought they could stop. The law and decision involved here, although aimed at Jehovah's witnesses, encourages nation-wide Nazi-like persecution of all who engage in pamphleteering on political, religious, scientific and social questions of importance, who cannot, because of conscience or lack of finance, purchase their "*freedom license*".

A decision which wrongfully works oppression and great injury to a minority, such as Jehovah's witnesses, manifestly shows that it is not for the welfare of the nation and its people. From "a Christian nation" (*Church* v. *United States,* 143 U. S. 457) and a "city" of refuge established by the forefathers it will be transformed town by town into a cage of hypocrisy.

Such decision blindly licenses rule by wicked local city authorities and their *backers* throughout the land who hate liberty for those who do not agree with them.

"As a roaring lion, and a ranging bear; so is a wicked ruler over the poor people."—Proverbs 28: 15.

"When the righteous are in authority, the people rejoice: but when the wicked beareth rule, the people mourn."—Proverbs 29: 2.

Four Freedoms and Forefathers Oppressed

It should be remembered that the forefathers of this nation once were a suppressed and beaten minority, before fleeing as refugees to this continent.

"Thou shalt neither vex a *stranger*, nor oppress him; for ye were strangers in the land of Egypt."—Exodus 22: 21.

To sustain this law will push the people of this nation back into the intolerant condition from which the founding fathers fled, resulting in corrupting and suppression of President Roosevelt's "*four freedoms*".

Justice Byrnes

speaking at Chicago before the Illinois Bar Association, four days prior to delivery of this majority opinion, concerning suppression of minorities in this country said:

> "Above the columns of the Supreme Court building, carved in marble are the words: 'Equal Justice Under Law'. Through the centuries these words have been engraved in the minds and hearts of men and women

> struggling against oppression. They embody the aspirations we have cherished from the Sermon on the Mount through Magna Carta to the Four Freedoms. . . . We must by all means avoid developing among ourselves a Hitler-like contempt of other groups and creeds and races. We want no Hitler Justice here. We want no trials by ax-men instead of by juries. We know the meaning of Equal Justice Under Law. We know the blessings of Liberty. To preserve these we will give our all, God helping us."

It is exceedingly difficult to comprehend how the war being waged to preserve the *four freedoms* can have full support of the common people or succeed when, from within, the nation's highest court publicly decrees that the individual's right to exercise such freedoms is by sufferance of State officials* and that such rights can be limited through taxation, thus destroying most of said freedoms.

Jehovah's witnesses and Former Nations

This Court should reckon with the paramount fact, that it is judicially dealing with servants of Almighty God.

The course taken by Gamaliel and his statement is here apropos. Among other things he said: "Refrain from these men, and let them alone: . . . lest haply ye be found even to fight against God."—Acts 5:34-39; see, also, Matthew 25:40, 45; Mark 9:42.

In this day no court in the world has occupied or now occupies the unique position of the United States Supreme Court. This Court has enjoyed a most vital role in the nation's history for the preservation of constitutional government and the application and maintenance of true democratic principles. It has the power to nullify or approve all acts of the legislative and executive branches of the state and federal governments.

* See Footnote No. 4, quotation from REED, J., page 12, supra.

For more than 150 years this Court has played a vi part in erecting the superstructure of the government a shielding constitutional liberties. The power vested in t Court is within certain spheres akin to that of an absolu monarch. Should the Court consider that it is dealing wi the servants of Almighty God, then it is well to review th history of some former nations whose kings in times pa dealt with them, adversely, and favorably, together with th results thereof.

For kindness shown by the Egyptian ruler of old t Joseph and other of Jehovah's witnesses, Almighty Go greatly blessed and protected that nation. (Genesis, chap ters 41 through 50) Thereafter Pharaoh began a course o opposition and persecution of God's people. Then JEHO VAH sent His witness Moses unto Pharaoh many times t request that the king permit His people to worship as Go had commanded. The king refused, each time becoming mor arrogant, harder and more cruel in his persecution o God's people. For this God sent the plagues upon Egypt When Pharaoh's army pursued Moses and the children o Israel as they fled from Egypt it was, by Jehovah's power swallowed up and destroyed in the sea.—Exodus chapter 1 to 14, inclusive.

Hiram, king of Tyre, was favored by Jehovah God be cause of kindness shown to King Solomon, one of Jehovah' witnesses.—1 Kings, chapters 5 through 7.

For their persecution of Jehovah's servants, Almighty God destroyed the nations of Moab, Ammon and Edom when their allied armies gathered against Jehovah's wit nesses under Jehoshaphat. (2 Chronicles 20: 1-37) Witness also, the destruction of an army of 1,000,000 Negroes who assaulted Asa, Jehovah's servant. (2 Chronicles 14) As to the destruction of Sennacherib's army for attempting de struction of Judah, see Isaiah, chapters 36 and 37. Becaus of the great defamation of Jehovah's name and the interfer ence with His witnesses through decrees and orders i

council, Jehovah destroyed Babylon completely.—Jeremiah, chapters 50 and 51.

"Behold, the nations are as a drop of a bucket, and are counted as the small dust of the balance [scales]." "But if they will not obey, I will utterly pluck up and destroy that nation, saith the LORD."—Isaiah 40:15; Jeremiah 12:17.

Final Results

At the instance of Haman, a decree was made by the king of ancient Persia that all persons of the kingdom must bow down to Haman, prime minister. (Esther, chapter 3) Thus they framed mischief by law, as stated in Psalm 94:20. The Book of Esther adds: "And when Haman saw that Mordecai bowed not, nor did him reverence, then was Haman full of wrath . . . wherefore Haman sought to destroy all the Jews that were throughout the whole kingdom of Ahasuerus, even the people of Mordecai. . . . And Haman said unto king Ahasuerus, There is a certain people scattered abroad and dispersed among the people in all the provinces of thy kingdom; and their laws are diverse from all people, neither keep they the king's laws: therefore it is not for the king's profit to suffer them. If it please the king, let it be written that they may be destroyed," (Esther 3:5-9) Because of Mordecai's obedience to JEHOVAH and his refusal to obey the king's decree, arrangements were made to hang Mordecai. The gallows were built. At the time appointed for the hanging, Mordecai was vindicated, but Haman was caught in his own trap. He was hanged on the gallows he had prepared for Mordecai. Haman here prophetically pictures present-day enemy religionists opposing Jehovah. Almighty God delivered Mordecai.—Esther, chapters 4 through 7.

When the final history is written concerning the battle now being waged for the *four freedoms* by the democracies, the people of this land and those who govern will suddenly

realize that, though unpopular, despised and hated, Jehovah's witnesses have done more than anyone else to resist the "total war" now being waged on the home fronts against the liberties of all people. In time all such opposers will realize that they have not only battled against Jehovah's witnesses, but against ALMIGHTY GOD.

It is hoped that in time to come, if not before this motion is ruled upon, some members of this Court who joined in the majority opinion will conclude that this Court's decision was error, even as was commendably done here by Justices Black, Douglas and Murphy concerning the *Gobitis* case, to the delight of all liberty-lovers. We suggest that, although it is never too late "to be right", the best time to reach such conclusion *as to the present cases* would be before this motion is ruled upon. If such conclusion is expressed after the Court has lost jurisdiction, it will do little or no good to the nation or those injured. It is too late to lock the corral gate after the horse is stolen!

In this connection it is well to consider the words of Justice Sutherland, dissenting, in *Associated Press* v. *N. L. R. B.*, 301 U. S. 103, 141, as follows:

> "Do the people of this land—in the providence of God, favored, as they sometimes boast, above all others in the plenitude of their liberties—desire to preserve those so carefully protected by the First Amendment: liberty of religious worship . . . ? If so, let them withstand all *beginnings* of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."

Conclusion

Wherefore petitioners pray that the orders and judgments heretofore entered herein affirming the judgments of the courts below be set aside and held for naught, and on the briefs of the parties and *amicus curiae* briefs that this motion for rehearing be granted and the Court render an order reversing the judgments of the courts below or, in the alternative, order the causes to be reargued orally. Petitioners pray for such other relief as they may show themselves justly entitled to in the premises.

ROSCO JONES, *Petitioner*
LOIS BOWDEN and
ZADA SANDERS, *Petitioners*
CHARLES JOBIN, *Appellant*
By HAYDEN C. COVINGTON
Counsel for Petitioners and Appellant

Certificate

I, Hayden C. Covington, do hereby certify that the foregoing motion for rehearing is prepared and filed in good faith so that justice may be done and not for the purpose of delay.

HAYDEN C. COVINGTON
Counsel for Petitioners